THE MUSLIM FAMILY LAWS ORDINANCE, 1961

(VIII of 1961)

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TEXT

[1]THE MUSLIM FAMILY LAWS ORDINANCE, 1961

(VIII of 1961)

[2 March 1961]

An
Ordinance
to give effect to certain recommendations of the Commission on Marriage and Family Laws.

WHEREAS it is expedient to give effect to certain recommendations of the Commission on Marriage and Family Laws;

NOW THEREFORE, in pursuance of the Proclamation of the seventh day of October, 1958, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:–

1. Short title, extent, application and commencement.– (1) This Ordinance may be called the Muslim Family Laws Ordinance, 1961.

(2) It extends to the whole of [2][the Punjab], and applies to all Muslim citizens of Pakistan, wherever they may be.

[3][(3) It shall come into force at once.]

[4][**2. Definitions**.– In this Ordinance:

(a) "Arbitration Council" means a body consisting of the Chairman and representative of each of the parties to a matter under the Ordinance; and, in case any party fails to nominate a representative within the prescribed time, the body formed without such representative shall be the Arbitration Council;

(b) "Chairman" means the Chairman of a Union Council, Union Administration or Municipal Committee or any officer authorized by the Government to discharge the functions of the Chairman under the Ordinance and where the Chairman is a non-Muslim or he himself wishes to make an application to the Arbitration Council, or is, owing to illness or any other reason, unable to discharge the functions of the Chairman, the Arbitration Council shall select one of its Muslim members as Chairman;

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[1]In pursuance of the Proclamation of the seventh day of October, 1958, and in exercise of all powers enabling him in that behalf, the President of Pakistan was pleased to make and promulgate this Ordinance which was published in the Gazette of Pakistan (Extraordinary), dated March 2,1961, pp. 693c-693g. This Ordinance was originally in the Federal ambit, however, the subject on which this law was enacted devolved to the provinces by virtue of 18th Amendment in the Constitution, hence, it was adapted, with amendments, for the province of the Punjab by the Muslim Family Laws (Amendment) Act 2015 (XIII of 2015), published in the Punjab Gazette (Extraordinary), dated March 18, 2015, pp. 3445-3446.

[2]Substituted for the word "Pakistan" by the Punjab Muslim Family Laws (Amendment) Act, 2015 (XIII of 2015), published in the Punjab Gazette (Extraordinary), dated March 18, 2015, pp. 3445-3446, s. 2(a).

[3]Substituted by the Act *ibid*., s. 2(b).

[4]*Ibid*., s. 3.

(c) "Government" means Government of the Punjab;

(d) "prescribed" means prescribed by rules made under this Ordinance; and

(e) "Union Council" means a Union Council, Municipal Committee, Cantonment Board, a Union Administration or, in case of absence of any of these local governments in a local area, any other comparable body constituted under any law relating to the local governments or local authorities.]

3. Ordinance to override other laws, etc.– (1) The provisions of this Ordinance shall have effect notwithstanding any law, custom or usage, and the registration of Muslim marriages shall take place only in accordance with those provisions.

(2) For the removal of doubt, it is hereby declared that the provisions of the Arbitration Act, 1940 (X of 1940), the Code of Civil Procedure, 1908 (Act V of 1908), and any other law regulating the procedure of courts, shall not apply to any Arbitration Council.

4. Succession.– In the event of the death of any son or daughter of the *propositus* before the opening of succession, the children of such son or daughter, if any, living at the time the succession opens, shall *per stirpes* receive a share equivalent to the share which such son or daughter, as the case may be, would have received if alive.

5. Registration of marriages.– (1) Every marriage solemnized under Muslim Law shall be registered in accordance with the provisions of this Ordinance.

[1][(2) For the purpose of registration of marriages under this Ordinance, the Union Council shall grant licenses to one or more persons, to be called Nikah Registrars.]

[2][(2A) The Nikah Registrar or the person who solemnizes a Nikah shall accurately fill all the columns of the *Nikahnama* form with specific answers of the bride or the bridegroom.]

(3) Every marriage not solemnized by the Nikah Registrar shall, for the purpose of registration under this Ordinance, be reported to him by the person who has solemnized such marriage.

[3][(4) If a person contravenes the provision of:

(i) subsection (2A), he shall be punished to simple imprisonment for a term which may extend to one month and fine of twenty five thousand rupees; and

(ii) subsection (3), he shall be punished to simple imprisonment for a term which may extend to three months and fine of one hundred thousand rupees.]

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[1]Substituted by the Punjab Muslim Family Laws (Amendment) Act, 2015 (XIII of 2015), published in the Punjab Gazette (Extraordinary), dated March 18, 2015, pp. 3445-3446, s. 4(a).

[2]Inserted by the Act *ibid*., s. 4(b).

[3]Substituted by the Act *ibid*., s. 4(c).

(5) The form of *nikah nama*, the registers to be maintained by Nikah Registrars, the records to be preserved by Union Councils, the manner in which marriages shall be registered and copies of *nikah nama* shall be supplied to the parties, and the fees to be charged therefor, shall be such as may be prescribed.

(6) Any person may, on payment of the prescribed fee, if any, inspect at the office of the Union Council the record preserved under sub-section (5), or obtain a copy of any entry therein.

6. Polygamy.– (1) No man, during the subsistence of an existing marriage, shall, except with the previous permission in writing of the Arbitration Council, contract another marriage, nor shall any such marriage contracted without such permission be registered under this Ordinance.

(2) An application for permission under sub-section (1) shall be submitted to the Chairman in the prescribed manner, together with the prescribed fee, and shall state the reasons for the proposed marriage, and whether the consent of existing wife or wives has been obtained thereto.

(3) On receipt of the application under sub-section (2), the Chairman shall ask the applicant and his existing wife or wives each to nominate a representative, and the Arbitration Council so constituted may, if satisfied that the proposed marriage is necessary and just, grant, subject to such conditions, if any, as may be deemed fit, the permission applied for.

(4) In deciding the application the Arbitration Council shall record its reasons for the decision, and any party may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision, [1][to the Collector] concerned and his decision shall be final and shall not be called in question in any court.

(5) Any man who contracts another marriage without the permission of the Arbitration Council shall–

(a) pay immediately the entire amount of the dower, whether prompt or deferred, due to the existing wife or wives, which amount, if not so paid, shall be recoverable as arrears of land revenue; and

[2][(b) on conviction upon complaint be punishable with the simple imprisonment which may extend to one year and with fine of five hundred thousand rupees.]

7. Talaq.– (1) Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of *talaq* in any form whatsoever, give the Chairman notice in writing of his having done so, and shall supply a copy thereof to the wife.

(2) Whoever, contravenes the provisions of sub-section (1) shall be punishable with simple imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees or with both.

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[1]Substituted for the words and commas", in the case of West Pakistan, to the Collector and, in the case of East Pakistan, to the Sub-Divisional Officer" by the Federal Adaptation of Laws Order, 1975 (4 of 1975), published in the Gazette of Pakistan (Extraordinary), dated August 1, 1975, pp. 435-467, Article (2) read with Schedule.

[2]Substituted by the Punjab Muslim Family Laws (Amendment) Act, 2015 (XIII of 2015), published in the Punjab Gazette (Extraordinary), dated March 18, 2015, pp. 3445-3446, s. 5.

(3) Save as provided in sub-section (5), a *talaq* unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from the day on which notice under sub-section (1) is delivered to the Chairman.

(4) Within thirty days of the receipt of notice under sub-section (1), the Chairman shall constitute an Arbitration Council for the purpose of bringing about a reconciliation between the parties, and the Arbitration Council shall take all steps necessary to bring about such reconciliation.

(5) If the wife be pregnant at the time *talaq* is pronounced, *talaq* shall not be effective until the period mentioned in sub-section [1][(3)] or the pregnancy, whichever be later, ends.

(6) Nothing shall debar a wife whose marriage has been terminated by *talaq* effective under this section from re-marrying the same husband, without an intervening marriage with a third person, unless such termination is for the third time so effective.

8. Dissolution of marriage otherwise than by talaq.– Where the right to divorce has been duly delegated to the wife and she wishes to exercise that right, or where any of the parties to a marriage wishes to dissolve the marriage otherwise than by *talaq,* the provisions of section 7 shall, *mutatis mutandis* and so far as applicable, apply.

9. Maintenance.– (1) If any husband fails to maintain his wife adequately, or where there are more wives than one, fails to maintain them equitably, the wife, or all or any of the wives, may in addition to seeking any other legal remedy available apply to the Chairman who shall constitute an Arbitration Council to determine the matter, and the Arbitration Council may issue a certificate specifying the amount which shall be paid as maintenance by the husband.

[2][(1A) If a father fails to maintain his child, the mother or grandmother of the child may, in addition to seeking any other legal remedy, apply to the Chairman who shall constitute an Arbitration Council and the Arbitration Council may issue a certificate specifying the amount which shall be paid by the father as maintenance of the child.]

(2) A husband or wife may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision of the certificate, [3][to the Collector] concerned and his decision shall be final and shall not be called in question in any court [4][:]

[5][Provided that the Commissioner of a Division may, on an application made in

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[1]Substituted for the figure and brackets "(2)" by the Muslim Family Laws (Second Amendment) Ordinance, 1961 (XXX of 1961), (w.e.f. 2.3.1961), published in the Gazette of Pakistan (Extraordinary), pp. 1128e-1128f, s. 2.

[2]Substituted by the Punjab Muslim Family Laws (Amendment) Act, 2015 (XIII of 2015), published in the Punjab Gazette (Extraordinary), dated March 18, 2015, pp. 3445-3446, s. 6.

[3]Substituted for the words and commas", in the case of West Pakistan, to the Collector and, in the case of East Pakistan, to the Sub-Divisional Officer" by the Federal Adaptation of Laws Order, 1975 (4 of 1975), published in the Gazette of Pakistan (Extraordinary), dated August 1, 1975, pp. 435-467, Article (2) read with Schedule.

[4]Substituted for the full stop by the Punjab Muslim Family Laws (Punjab Amendment) Act, 1975 (XI of 1975), published in the Punjab Gazette (Extraordinary), dated March 11, 1975, s. 2.

[5]Added by the Act *ibid*.

this behalf and for reasons to be recorded, transfer an application, for revision of the certificate from a Collector to any other Collector, or to a Director, Local Government or to an Additional Commissioner in his Division.]

(3) Any amount payable under sub-section (1) or (2), if not paid in due time, shall be recoverable as arrears of land revenue.

10. Dower.– Where no details about the mode of payment of dower are specified in the *nikah nama*, or the marriage contract, the entire amount of the dower shall be presumed to be payable on demand.

11. Power to make rules.– (1) The [1][[2][Federal Government] in respect of the Cantonment areas and the Provincial Government in respect of other areas] may make rules to carry into effect the purposes of this Ordinance.

(2) In making rules under this section, the [3][such Government] may provide that a breach of any of the rules shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

(3) Rules made under this section shall be published in the official Gazette, and shall thereupon have effect as if enacted in this Ordinance.

[4][12. * * * * * * * * *]

[5][13. * * * * * * * * *]

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[1]Substituted for the words "Provincial Government" by the Central Adaptation of Laws Order, 1964 (1 of 1964), published in the Gazette of Pakistan (Extraordinary), dated May 28, 1964, pp. 251c-251aao, Article (2) read with Schedule.

[2]Substituted for the words "Central Government" by the Federal Adaptation of Laws Order, 1975 (4 of 1975), published in the Gazette of Pakistan (Extraordinary), dated August 1, 1975, pp. 435-467, Article (2) read with Schedule.

[3]Substituted for the words "Provincial Government" by the Central Adaptation of Laws Order, 1964 (1 of 1964), published in the Gazette of Pakistan (Extraordinary), dated May 28, 1964, pp. 251c-251aao, Article (2) read with Schedule.

[4]Omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (XXVII of 1981) (w.e.f. 8.7.1981), published in the Gazette of Pakistan (Extraordinary), pp. 345-475. s. 3 read with Second Schedule.

[5]*Ibid*.